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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

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12 CHARLES JOSEPH FAIN,
13 and CATHERINE S. COOLEY,

Case No. C04-5762JET
CR01-5120JET

14 Petitioners,

ORDER

15 v.

16 UNITED STATES OF AMERICA,

17 Respondent,

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19 THIS MATTER comes on before the above-entitled Court upon Defendants' Motions for
20 Release Pending Appeal.

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22 Having considered the entirety of the record and files herein, the Court finds and rules as
23 follows:

24 Defendants Charles Fain and Catherine Cooley seek release pending determination of

1 their 2255 petitions.¹

2 Defendants cite The Bail Reform Act, 18 U.S.C. §3143(b) as the appropriate standard
3 governing release pending a ruling on their 2255 petitions. However, the Bail Reform Act has been
4 held not to apply to federal prisoners seeking post conviction relief. United States v. Mett, 41 F.3d
5 1281 (9th Cir. 1995). Rather, Fed.R.App. P. 23 and 9th Cir. R. 23-1 govern the release or detention
6 of prisoners collaterally attacking their convictions. Mett, 41 F.3d at 1282.

7 Release under Fed.R.App.P. 23 entitles prisoners to release only upon a showing of special or
8 exceptional circumstances, or a high probability of success. Id. Nonetheless, Defendants' motions
9 fail under either standard.

10 Accordingly, Defendants' motions are DENIED.

11 The Clerk of the Court is directed to send uncertified copies of this order to all counsel of
12 record.

13 DATED this 9th Day of May, 2005.

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15 /s Jack E. Tanner

16 _____
17 JACK E. TANNER
18 SR. UNITED STATES DISTRICT JUDGE
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25 ¹ Fain's petition is filed in CR01-5120. Cooley's petition is filed in C04-5762.
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